Reserved Jugement

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 138 of 2004

1. Kashmir Kaur, widow of deceased Devendra Singh
2. Gurmit Singh, S/O deceased Devendra Singh,
3. Gurprit Singh, S/O deceased Devendra Singh,
4. Gurmit Kaur, D/O deceased Devendra Singh,
   All residents of Quarter No. 23, Type 2, Sector 4,
   B.H.E.L., P.S. Ranipur,
   District Haridwar … **Appellants.**

Versus

1. Devidas S/O Kalayan Singh,
   R/O at present Mohalla Shivpura, P.S. Kankhal,
   Tahsil & Distt. Haridwar (Driver).
2. Phulmati W/O Sri Lal Singh,
   R/O H.No. 439, Sector 4, Type 2 B.H.E.L.
   Ranipur, Haridwar.
3. United India Insurance Company Ltd.
   Through its Regional Manager,
   United India Insurance Co. Ltd. Ranipur Moad,
   Haridwar.

… **Respondents.**

Sri Sanjeev Singh, Advocate, learned counsel for the appellants.
Sri D.S.Patni, Advocate, for the Insurance Co.-respondent no.3

Coram : Hon'ble Irshad Hussain, J.
Hon'ble B.S.Verma, J.

Date December 17, 2004.

(Per Hon'ble B.S.Verma, J.)

This appeal under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act*)** is directed against the judgment and order dated 10-3-2004 passed by the Motor Accident Claims Tribunal/Addl. District Judge, IV F.T.C. Hardwar **(*in short the Tribunal*)** in Claim Petition No. 113 of 2002, whereby claim petition was dismissed. Aggrieved, the claimants have come up in appeal.

Brief facts were that Devendra Singh aged 58 years and earning Rs. 12,762/- per month lost life in a motor vehicle accident on 25-5-2002 at 9-30 p.m. According to the claimants, at the relevant time, the deceased was coming on his bicycle from Sector 4 to his house. When he reached near Community Centre, offending Tempo No. UP 10B-4135 driven rashly and negligently by its driver came and hit the cyclist with the result the deceased received grievous injuries. He was taken to B.H.E.L. Hospital by the police personnel, where he succumbed to his injuries on 26.5.2002. Report of the accident was lodged on 26.5.2002 at P.S. Ranipur by Sant Ram. Inquest Report was prepared and the dead body was subjected to Post Mortem on 26.5.2002. The deceased was employed as senior technician in the B.H.E.L. Hence the claim petition was filed by his dependents/legal heirs for compensation of Rs. 20,32,588/-.

The owner of the offending vehicle, Phoolwati, filed her written statement alleging therein that she was wrongly impleaded in the case as the vehicle Tempo No. UP 10B-4135 was sold by her to one Rakesh Kumar by way of sale-letter, who got the tempo released from the court of C.J.M. Hardwar, therefore, she was not liable for compensation.

The Insurance Company of the offending vehicle filed its written statement asserting therein that the deceased himself was negligent; that the income of the deceased was shown excessive. Claim has also been contested on other statutory defences.

On the pleadings of the parties, learned Tribunal framed following issues in the case:-

1. Whether the cycle of Devendra Singh s/o Teja Singh was hit by the driver of Tempo No. UP 10-B-4135 driven rashly and negligently on 25-5-2002 resulting into death of Devendra Singh? If so, its effect?

2. Whether deceased Devendra Singh was employed as senior technician in B.H.E.L. Ranipur having monthly income of Rs. 12,762/- per month at the time of death?

3. Whether the claimants are entitled to compensation? If so, to what amount and from which O.P.?

The learned Tribunal held that the claimants failed to prove that the accident resulting into injuries and death of the deceased was caused due to rash and negligent driving by the driver of the offending Tempo. It further held that the income of the deceased was Rs. 5,781/- per month. Ultimately, the claim petition was dismissed.

In this appeal, the following points arise for consideration:

1. Whether the deceased Devendra Singh sustained grievous injuries and died due to rash and negligent driving by the driver to Tempo No. U.P. 10B-3145 on 25.5.2002?

2. To what amount of compensation are the claimants entitled and from whom?

Point No. 1: Claimants filed copy of F.I.R. (paper no. 30-C/3). In this F.I.R., it was mentioned that the driver of Tempo No. UP 10B-4135 hit the deceased near Community Centre. Certified copy of the charge-sheet submitted by the police after investigation of the case was filed as paper no. 32-C/2, on the basis of which Criminal Case No. 4063 of 2002 was registered against driver Devidas under Section 279, 337, 338, 427 and 304-A I.P.C. Claimants-appellants examined P.W.1 Gurprit Singh, son of the deceased and P.W.2, Vijay Mehra. P.W.2 is the eye witness of the occurrence. He stated that on 25.5.2002 he was repairing his scooter in Sector IV, B.H.E.L. At about 9-30 p.m., he saw that near Community Centre, Three Wheeler U.P. UP 10B-4135 having no light on came and hit the cyclist. He went there and recognized the

deceased. He went to inform the family of the deceased. He categorically stated that the accident occurred due to rash and negligent driving by driver of the said Tempo. In his cross-examination, he reiterated the same fact by stating that the accident occurred at a distance of 20-25 paces from him. The testimony of P.W.2 is indicative of the fact that he witnessed the accident and that he was one of the person who informed about the accident to the son of the deceased P.W.1. The learned Tribunal has discarded the testimony of PW 2 mainly on the ground that he was named as witness in the charge-sheet by the police. It is true that PW 2 was not named as a witness by the police, but in the F.I.R. there is no mention of witnesses. Had he been named in the F.I.R. as witness and then non-mention of his name in the charge-sheet would have been fatal. The approach of the learned Tribunal in discarding the testimony of this natural witness was not proper. Even if the testimony of PW 2 is excluded for the sake of arguments, the fact that after investigation by the police, charge-sheet was submitted against the dreiver of the Tempo also shows that prima facie the driver of the Tempo was rash and negligent. Another ground of rejection of the testimony of P.W.2 by the Tribunal is that PW 1 Gurprit Singh has not mentioned his name as informer of the accident. Careful perusal of the testimony of P.W.1 would show that no suggestion was made to him that no other person than Dheeraj had informed about the accident. It is a thing of common knowledge that the news of fatal accident in a locality spreads from one person to other and communication of information of the incident reaches the family from different sources. Therefore, rejection of his testimony on the another ground by the Tribunal is also not proper. Having considered the testimony of P.W.2 very cautiously, we are of the view that he is a reliable and natural eye witness. He denied the suggestion that being acquainted with the family of the deceased he was giving false evidence. There is nothing in his cross-examination of P.W.2 so as to cast any doubt on the veracity of his testimony. To convert the testimony of P.W.2, Vijay Mehra, the best witness to support the opposite parties could

be driver Devidas, but the Opposite Parties did not produce him. We are of the considered view that the testimony of P.W.2 coupled with the F.I.R. and charge-sheet filed against the driver Devidas, on the basis of which Criminal Case No. 4063 of 2002 was registered in the Court of C.J.M. Hardware is sufficient to lead that the accident occurred due to rash and negligent driving by the driver of the offending Tempo. Point No.1 is answered accordingly.

Point No.2: Now it has to be seen as to who is the owner of the offending vehicle. It is important to mention here that the owner of the vehicle Phoolwati has filed written statement but has not led any evidence further. Her contention that she was wrongly impleaded in the case is misconceived. The accident occurred on 25-5-2002 and according to her, she sold out the vehicle to Rakesh Kumar on 27.6.2002. Thus, on the date of accident, she was the registered owner of the vehicle. No evidence to the contrary has been led from the side of the opposite parties. Being owner of the offending vehicle, Phulwati is liable for compensation.

Now it has to be examined whether the Tempo No. UP 10 B-4135 was duly insured or not. The claimants filed copy Insurance Cover Note No. 309226. Insurance Company has not disputed this document. From a perusal of the Insurance Cover Note, in reveals that the vehicle was insured from the period 10-4-2002 to 9.4.2003. The name of the insured is Smt. Phoolwati. It is thus proved that the offending Tempo was duly insured on the date of accident with United India Insurance Company-respondent no.3.

Coming to income of the deceased, it is pertinent to mention that the claimants filed details of salary of the deceased for the year 2001-2002 (paper No. 13-C). From a perusal of this document, it comes out that the annual basic pay of the deceased was Rs. 1.13.577/- and on this pay, the deceased received D.A. of Rs. 35,040/- besides certain other allowances, like conveyance allowance, washing allowance, etc. Even if these allowances are

excluded from consideration, the deceased was getting Pay plus D.A. i.e. Rs. 1,13,577 + 35,040 = 1,48,617/-. The deceased was liable to pay income tax of Rs.21,043/-. This amount can be deducted from the income of the deceased, which comes to 1,48,617/- (-) 21,043 = Rs. 1,27,574/-. For the purposes of determining the loss of dependency per annum, 1/3rd from it shall be deducted, which comes to Rs. 42,525/-, thereby annual loss of dependency comes to Rs. 85,049/-, which can be rounded to Rs. 85,000/- per annum. The deceased was aged 58 years and admittedly, he would have served in the B.H.E.L. upto the age of 60 years. If we consider the availability of post retirement-death benefits to the claimants, then in the peculiar facts and circumstances of the case, it will be just and proper to apply multiplier of 8 to determine the compensation. Thus, the amount of compensation now comes to 8 x 85,000 = 6,80,000/-. The claimant-appellants are entitled to get compensation of Rs. 6,80,000/-. In addition to it, the claimants are entitled to the sums of Rs. 2,000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium. Thus, the claimant-appellants are entitled to total compensation of Rs. 6,87,000/-. On this amount, the claimant shall be entitled to the interest @ 6% per annum from the date of filing of claim petition till the date of payment. Since the vehicle was insured with the United India Insurance Company, the compensation shall be payable by the respondent no.3. The point in answered accordingly.

For the reasons and discussion aforementioned, the appeal is liable to be allowed.

The appeal is allowed. The judgment and order dated 10-3-2004, under appeal, is set aside. The appellants are entitled to compensation of Rs. 6,87,000/-(Rs. Six lacs eighty-seven thousand) along with interest @ 6% per annum payable by the Insurance Company-respondent no.3. No order as to costs.

(B.S.Verma, J.) **(Irshad Hussain, J.)**

RCP